



TRANSMITTAL OF APPEAL BRIEF

Docket No.
59428/P001US/10020580

In re Application of: Alan B. Cayton et al.

Application No.
09/641,021-Conf. #4559

Filing Date
August 17, 2000

Examiner
J. P. Ouellette

Group Art Unit
3629

Invention: SYSTEM AND METHOD FOR AUTOMATED SCREENING AND QUALIFICATION OF EMPLOYMENT CANDIDATES

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: March 9, 2006

The fee for filing this Appeal Brief is \$ 250.00

☐ Large Entity

☒ Small Entity

☐ A petition for extension of time is also enclosed.

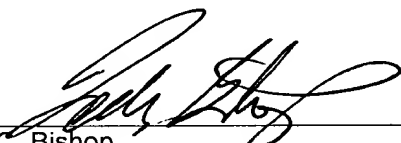
The fee for the extension of time is _____

☒ A check in the amount of \$ 250.00 is enclosed.

☐ Charge the amount of the fee to Deposit Account No. 06-2380
This sheet is submitted in duplicate.

☐ Payment by credit card. Form PTO-2038 is attached.

☒ The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. 06-2380
This sheet is submitted in duplicate.



Jody C. Bishop
Attorney Reg. No. : 44,034
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-8007

Dated: May 2, 2006



Docket No.: 59428/P001US/10020580
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Alan B. Cayton et al.

Application No.: 09/641,021

Confirmation No.: 4559

Filed: August 17, 2000

Art Unit: 3629

For: SYSTEM AND METHOD FOR AUTOMATED
SCREENING AND QUALIFICATION OF
EMPLOYMENT CANDIDATES

Examiner: J. P. Ouellette

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on March 9, 2006, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- | | | |
|-------|---|---------------------------------------|
| I. | Real Party In Interest | |
| II. | Related Appeals and Interferences | |
| III. | Status of Claims | |
| IV. | Status of Amendments | 05/04/2006 TBESHAH1 00000017 09641021 |
| V. | Summary of Claimed Subject Matter | FC:2402 250.00 OP |
| VI. | Grounds of Rejection to be Reviewed on Appeal | |
| VII. | Argument | |
| VIII. | Claims Appendix | |
| IX. | Evidence Appendix | |
| X. | Related Proceedings Appendix | |

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Strategic Outsourcing Corporation.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 92 claims pending in application.

B. Current Status of Claims

1. Claims canceled: 93-101
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-92
4. Claims allowed: None
5. Claims rejected: None

C. Claims On Appeal

The claims on appeal are claims 1-92

IV. STATUS OF AMENDMENTS

The present application was filed August 17, 2000. A Final Office Action was mailed January 19, 2006. Applicant did not file an Amendment in response to the Final Office Action, but instead filed a Notice of Appeal, which this brief supports. Accordingly, the claims on appeal are those as rejected in the Final Office Action of January 19, 2006. A complete listing of the claims is provided in the Claims Appendix hereto.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in each of the claims involved in the appeal, referring to the specification by page and line number and to the drawings by reference characters, as required by 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified by a corresponding reference to the specification and drawings where applicable. It should be noted that the citation to passages in the specification and drawings for each claim element does not imply that the limitations from the specification and drawings should be read into the corresponding claim element.

According to one claimed embodiment, such as that of independent claim 1, a method for qualifying candidates for employment with an employer is provided. The method comprises executing a computer program (e.g., application generator 112 of FIGURE 1 and application generator 202_B of FIGURE 2), the computer program receiving as input from the employer a desired hiring criteria of the employer (e.g., operational block 402 of FIGURE 4, and *see* page 7, lines 13-16 and page 10, line 1 – page 11, line 2 of the specification). Based on the desired hiring criteria of the employer, the computer program generates at least one customized application program (e.g., IVR SAQ 113 and/or Browser SAQ 114 of FIGURE 1, SAQ 204_A and/or SAQ 204_B of FIGURE 2) that is executable to interact with candidates (e.g., candidates 206_A-206_C of FIGURE 2) for employment with the employer and determine whether each of the candidates is qualified for employment with the employer (e.g., operational block 406 of FIGURE 4, and *see* page 7, lines 13-16 and page 10, line 1 – page 12, line 2 of the specification). The method further comprises allowing the candidates access to the at least one generated customized application program (*see* page 12, lines 3-20 of the specification). Responsive to input from each of the candidates to the at least one generated customized application program, the at least one generated customized application program automatically determines whether each of the candidates qualifies for a position of employment with the employer (e.g., operational block 530 of FIGURE 5, and *see* page 7, lines 13-16 and page 12, lines 21-28 of the specification).

In certain embodiments, such as that of claim 6, the computer program receives the desired hiring criteria from a user interface (e.g., employer user interface 111 of FIGURE 1 and/or employer interface 202_A of FIGURE 2).

In certain embodiments, such as that of claim 7, the user interface is a separate program executable to communicate with the computer program (*see* page 10, lines 8-11 of the specification).

In certain embodiments, such as that of claim 13, the generating step includes generating a plurality of the customized application program (e.g., IVR SAQ 113 and Browser SAQ 114 of FIGURE 1, SAQ 204_A and SAQ 204_B of FIGURE 2, and *see* page 11, line 2 – page 12, line 2 of the specification).

In certain embodiments, such as that of claim 14, each of the plurality of customized application programs is executable to enable interaction with candidates via a different communication platform (*see* page 11, line 2 – page 12, line 2 of the specification).

In certain embodiments, such as that of claim 15, the computer program receives as input from the employer preferences of the employer as to characteristics of the at least one customized application program (*see* page 10, lines 13-21, page 14, line 15 – page 15, line 5, and page 19, line 24 – page 25, line 19 of the specification).

In certain embodiments, such as that of claim 16, the computer program receives as input from the employer indication of one or more communication platforms on which the at least one customized application program is to enable access by candidates (*see* page 24, lines 15-21 of the specification).

In certain embodiments, such as that of claim 78, the input of employer preferences as to characteristics of the at least one customized application program received by the computer program includes at least one selected from the group consisting of: input indicating whether the at least one customized application program is to automatically schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one customized application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one customized application program is to request supplemental material from candidates determined to be qualified for a position (e.g., page 24, lines 4-14), input

indicating whether the at least one customized application program is to forward supplemental material received from qualified candidates to one or more hiring managers (e.g., page 24, lines 4-14 and page 29, line 16 – page 30, line 4), and input indicating whether the at least one customized application program is to schedule future testing with a candidate determined to be qualified for a position (e.g., page 23, lines 4-18).

According to another claimed embodiment, such as that of independent claim 30, a system for use in qualifying candidates for employment with an employer is provided. The system comprises a processor-based device (e.g., page 10, lines 1-8 of the specification), and a computer program (e.g., application generator 112 of FIGURE 1 and application generator 202_B of FIGURE 2) executable by the processor-based device to receive as input desired hiring criteria of the employer (e.g., operational block 402 of FIGURE 4, and *see* page 7, lines 13-16 and page 10, line 1 – page 11, line 2 of the specification) and generate at least one application program (e.g., IVR SAQ 113 and/or Browser SAQ 114 of FIGURE 1, SAQ 204_A and/or SAQ 204_B of FIGURE 2). The desired hiring criteria specifies at least one attribute to be possessed by a candidate to be considered qualified for a position of employment (*see* page 7, lines 13-16 and page 10, line 1 – page 11, line 2 of the specification). The at least one application program is executable to interact with candidates and determine whether each of the candidates qualifies for the position of employment with the employer (e.g., operational block 530 of FIGURE 5, and *see* page 7, lines 13-16 and page 12, lines 21-28 of the specification).

In certain embodiments, such as that of claim 35, the computer program includes a user interface for interacting with the employer to receive as input the desired hiring criteria (e.g., employer user interface 111 of FIGURE 1 and/or employer interface 202_A of FIGURE 2).

In certain embodiments, such as that of claim 41, the computer program is executable to generate a plurality of the application programs (e.g., IVR SAQ 113 and Browser SAQ 114 of FIGURE 1, SAQ 204_A and SAQ 204_B of FIGURE 2, and *see* page 11, line 2 – page 12, line 2 of the specification).

In certain embodiments, such as that of claim 42, each of the plurality of application programs is executable to enable interaction with candidates via a different communication platform (*see* page 11, line 2 – page 12, line 2 of the specification).

In certain embodiments, such as that of claim 82, the computer program is operable to receive a preference of the employer as to one or more communication platforms on which the at least one application program is to enable access by candidates (*see* page 24, lines 15-21 of the specification).

In certain embodiments, such as that of claim 83, the input of employer preferences as to operational characteristics of the at least one application program includes at least one selected from the group consisting of: input indicating whether the at least one application program is to automatically schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one application program is to request supplemental material from candidates determined to be qualified for a position (e.g., page 24, lines 4-14), input indicating whether the at least one application program is to forward supplemental material received from qualified candidates to one or more hiring managers (e.g., page 24, lines 4-14 and page 29, line 16 – page 30, line 4), and input indicating whether the at least one application program is to schedule future testing with a candidate determined to be qualified for a position (e.g., page 23, lines 4-18).

According to another claimed embodiment, such as that of independent claim 54, computer executable program code stored to a computer-readable medium, the code for generating customized programs for qualifying candidates for employment with an employer, is provided. The computer executable program code comprises code for presenting a user interface (e.g., employer user interface 111 of FIGURE 1 and/or employer interface 202_A of FIGURE 2) for receiving hiring criteria from an employer (e.g., operational block 402 of FIGURE 4, and *see* page 7, lines 13-16 and page 10, line 1 – page 11, line 2 of the specification). The computer executable program code further comprises code for presenting

a user interface (e.g., employer user interface 111 of FIGURE 1 and/or employer interface 202_A of FIGURE 2) for receiving preferences from the employer regarding operational characteristics of at least one qualification program to be generated (*see* page 10, lines 13-21, page 14, line 15 – page 15, line 5, and page 19, line 24 – page 25, line 19 of the specification). The computer executable program code further comprises code for generating at least one qualification program (e.g., IVR SAQ 113 and/or Browser SAQ 114 of FIGURE 1, SAQ 204_A and/or SAQ 204_B of FIGURE 2) for interacting with candidates in accordance with the received preferences and determining whether each of the candidates qualifies for a position of employment with the employer (e.g., operational block 530 of FIGURE 5, and *see* page 7, lines 13-16 and page 12, lines 21-28 of the specification).

In certain embodiments, such as that of claim 56, the code for presenting and the code for generating are each part of separate computer programs that are capable of communicating with each other (*see* page 10, lines 8-11 of the specification).

In certain embodiments, such as that of claim 84, an indication of the at least one communication platform is received as one of the preferences (*see* page 24, lines 15-21 of the specification).

In certain embodiments, such as that of claim 85, the user interface for receiving preferences from the employer is operable to receive at least one selected from the group consisting of: input indicating whether the at least one qualification program is to automatically schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one qualification program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one qualification program is to request supplemental material from candidates determined to be qualified for a position (e.g., page 24, lines 4-14), input indicating whether the at least one qualification program is to forward supplemental material received from qualified candidates to one or more hiring managers (e.g., page 24, lines 4-14 and page 29, line 16 – page 30, line 4), and input indicating whether the at least

one qualification program is to schedule future testing with a candidate determined to be qualified for a position (e.g., page 23, lines 4-18).

According to another claimed embodiment, such as that of independent claim 62, a business method for qualifying candidates for employment with an employer is provided. The business method comprises allowing an employer access to a computer executable program (e.g., application generator 112 of FIGURE 1 and/or application generator 202_B of FIGURE 2), wherein the computer executable program enables the employer to generate at least one customized application program (e.g., IVR SAQ 113 and/or Browser SAQ 114 of FIGURE 1, SAQ 204_A and/or SAQ 204_B of FIGURE 2) based on a desired hiring criteria of the employer (e.g., operational block 402 of FIGURE 4, and *see* page 7, lines 13-16 and page 10, line 1 – page 11, line 2 of the specification). The desired hiring criteria defines at least one attribute desired to be possessed by a candidate to be considered qualified for a position of employment (e.g., *see* page 7, lines 13-16 and page 10, line 1 – page 11, line 2 of the specification). The business method further comprises allowing candidates access to the at least one generated customized application program (*see* page 12, lines 3-20 of the specification). Responsive to input from each of the candidates to the at least one customized application program, the at least one customized application program automatically determines whether each of the candidates qualifies for the position of employment with the employer (e.g., operational block 530 of FIGURE 5, and *see* page 7, lines 13-16 and page 12, lines 21-28 of the specification).

In certain embodiments, such as that of claim 87, the input of employer preferences as to operational characteristics of the at least one customized application program received by the computer executable program includes at least one selected from the group consisting of: input indicating whether the at least one customized application program is to automatically schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one customized application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position (e.g., page 23, line 19 – page 24, line 3), input indicating whether the at least one customized application program is to request supplemental material from candidates determined to be qualified for a position (e.g., page 24, lines 4-14),

input indicating whether the at least one customized application program is to forward supplemental material received from qualified candidates to one or more hiring managers (e.g., page 24, lines 4-14 and page 29, line 16 – page 30, line 4), and input indicating whether the at least one customized application program is to schedule future testing with a candidate determined to be qualified for a position (e.g., page 23, lines 4-18).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-2, 6-26, 28-34, 36-44, 46-76, and 78-87 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,618,734 issued to Williams et al. (hereinafter “*Williams*”).

Claims 27, 45, and 77 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Williams*.

Claims 3-5, 35, and 88-92 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Williams* in view of U.S. Patent No. 6,701,313 issued to Smith (hereinafter “*Smith*”).

VII. ARGUMENT

Appellant respectfully traverses the outstanding rejections of the pending claims, and requests that the Board reverse the outstanding rejections in light of the remarks contained herein. The claims do not stand or fall together. Instead, Appellant presents separate arguments for various independent and dependent claims. Each of these arguments is separately argued below and presented with separate headings and sub-heading as required by 37 C.F.R. § 41.37(c)(1)(vii).

A. Rejections under 35 U.S.C. §102(e) over *Williams*

Claims 1-2, 6-26, 28-34, 36-44, 46-76, and 78-87 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Williams*. Appellant respectfully traverses this rejection below.

To anticipate a claim under 35 U.S.C. § 102, a single prior art reference must teach every element of the claim, *see* M.P.E.P. § 2131. As discussed further below, Appellant submits that *Williams* fails to anticipate claims 1-2, 6-26, 28-34, 36-44, 46-76, and 78-87

because: 1) *Williams* is not prior art to these claims in view of the Declaration of Alan Cayton submitted April 6, 2005 (hereinafter “Cayton Declaration”) which antedates the July 20, 2000 date of *Williams*, and 2) *Williams* fails to teach all elements of the claims.

Independent Claim 1 and Dependent Claims 2, 8-12, 17-26, and 28-29

Independent claim 1 is not anticipated by *Williams* because: 1) *Williams* is not prior art to the claim in view of the Cayton Declaration which antedates the July 20, 2000 date of *Williams*, and 2) *Williams* fails to teach all elements of the claim. Appellant presents each of these arguments below.

1. Cayton Declaration Antedates *Williams*

Applicant submitted the Cayton Declaration April 6, 2005 under 35 C.F.R. §1.131, which sets forth facts sufficient for antedating *Williams*. A copy of the Cayton Declaration is provided for the Board’s convenience in the Evidence Appendix hereto. *Williams* has an effective date under 35 U.S.C. §102(e) of July 20, 2000. The Cayton Declaration establishes prior conception coupled with diligence to the filing date of the present application less than one month later on August 17, 2000. Thus, the Cayton Declaration antedates *Williams*, and all claim rejections based on *Williams* should therefore fall.

The Final Office Action recognizes on page 17, paragraph number 71, thereof that declarations were submitted on December 9, 2004 and April 6, 2005. The Final Office Action goes on to assert that the declaration filed December 9, 2004 has been considered but is ineffective for antedating the July 20, 2000 date of *Williams*, *see* paragraph number 72 of the Final Office Action. The Final Office Action asserts that the declaration of December 9, 2004 is ineffective because: 1) the evidence of conception submitted therewith is insufficient, and 2) the declaration fails to establish sufficient diligence from just prior to the antedated date of July 20, 2000 to the August 17, 2000 filing date of the present application, *see* paragraph numbers 72-77 of the Final Office Action.

The Final Office Action does not address the effectiveness of the declaration submitted April 6, 2005. Irrespective of whether the declaration submitted December 9, 2004 is effective for antedating *Williams*, Appellant respectfully submits that the Cayton

Declaration submitted April 6, 2005, which provides greater detail than the declaration of December 9, 2004, is effective for antedating *Williams*.

While the Final Office Action only addresses the ineffectiveness of the December 9, 2004 declaration and makes no assertion that the April 6, 2005 declaration is ineffective for antedating *Williams*, Appellant addresses below the sufficiency of evidence and establishment of diligence by the April 6, 2005 Cayton Declaration to clearly illustrate the effectiveness of this declaration for antedating *Williams*. The April 6, 2005 declaration is referred to herein as the "Cayton Declaration".

i. Sufficiency of Evidence of Conception of Invention

The evidence submitted with the Cayton Declaration is sufficient to support the assertion that the claimed invention was conceived prior to July 20, 2000. As set forth in M.P.E.P. § 715.07, conception is the mental part of the inventive act, but it must be capable of proof, as by drawings. *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897) established that conception is more than a mere vague idea of how to solve a problem; the means themselves and their interaction must be comprehended also. The evidence submitted in the Cayton Declaration is sufficient to establish conception by the inventors prior to July 20, 2000, as discussed further below.

Exhibit A to the Cayton Declaration includes FIGURES, which correspond to FIGURE 1 of the present application. The Cayton Declaration sets forth that Alan Cayton comprehended an embodiment of this invention, as described more fully in conjunction with FIGURE 1 of the present application, prior to June 12, 2000. It should be noted that evidence of actual reduction to practice is not required. Rather, the evidence submitted in the Cayton Declaration (i.e., possession of FIGURE 1 of the present application) is sufficient to give rise to an inference that the invention was conceived prior to June 12, 2000, and thus prior to July 20, 2000, particularly considering that the inventor declares that he had conceived of the details set forth for this FIGURE in the present application prior to June 12, 2000. Further, considering that the application was filed less than one month after July 20, 2000 (i.e., on August 17, 2000), the fact that FIGURE 1 existed prior to July 20, 2000 supports the assertion that the inventors had, prior to July 20, 2000, conceived of the details discussed with FIGURE 1 in the present application.

Further, the FIGURES included in the evidence are not a “mere vague idea” of how to solve a problem, but instead identify the elements and illustrate interaction between the elements. More specifically, the FIGURES included in the evidence show an application generator with an associated user interface coupled therewith. The FIGURES further show IVR and Browser (web-based) applications that are illustrated as generated by the application generator. The IVR and Browser applications are labeled as “SAQs”, and the evidence further includes pages explaining that SAQ (Self-Administered Qualification, *see* page 1 of Exhibit A) is: “A Software Product That Provides a Powerful, Customized Operating Environment for Applicant Screening, Qualification and Scheduling” (*see* page 3 of Exhibit A). Thus, the IVR and Browser applications generated by the application generator are described as software applications for qualifying candidates. Further, the FIGURE on page 2 of Exhibit A shows a common symbol used for representing a telephone coupled to the IVR application, thus illustrating that a candidate can interact with the IVR application via a telephone. The FIGURE further shows the Browser application as coupled to the World Wide Web (WWW) communication network, and a representation of a computer (e.g., PC) coupled to the WWW network, thus illustrating that a candidate can interact with the Browser application via a computer coupled to the WWW network. Accordingly, this evidence shows that the inventor possessed more than a mere vague idea because it shows the various elements and their interactions.

Further, to dispose of a reference, an applicant need only establish prior conception of as much of the claimed invention as the reference happens to show. For instance, in *In re Stempel*, 241 F.2d 755, 113 USPQ 77 (CCPA 1957), the CCPA concluded:

We are convinced that under the law all the applicant can be required to show is priority with respect to so much of the claimed invention as the references [sic] happens to show. When he has done that he has disposed of the references....

In the case of a reference, it is fundamental that it is valid only for what it discloses and if the applicant establishes priority with respect to that disclosure, and there is no statutory bar, it is of no effect at all....

The rule [1.131] must be construed in accordance with the rights given to inventors by statute and this excludes a construction permitting the further use of a reference as a ground of rejection after all pertinent subject matter in it has been antedated to Dean satisfaction of the patent office.

In the present case, the evidence submitted with the Cayton Declaration certainly shows at least as much detail as is provided in *Williams*. Indeed, the submitted evidence more clearly sets forth that an application generator generates the applications (e.g., IVR SAQs and Browser SAQs) than does the teaching of *Williams*. *Williams* does not clearly establish that an application generator generates the application to interact with candidates. Indeed, Appellant finds no express teaching in *Williams* that an application generator generates the application to interact with candidates. For instance, while *Williams* mentions “the present system and method accepts changes to a client’s or employer’s employment criteria and implements those changes overnight” (col. 2, lines 38-41 of *Williams*), *Williams* makes no mentions of how an application is created to interact with candidates to test for such employment criteria (e.g., a code developer could work to manually create the application with which candidates interact, rather than an application generator generating such application).

To the extent that any inference regarding an application generator can be drawn from the teaching of *Williams*, the evidence submitted in the Cayton Declaration clearly establishes priority with respect to so much of the claimed invention as *Williams* teaches. That is, the evidence provides at least as much detail concerning an application generator generating applications with which candidates can interact as does the applied *Williams* reference.

In view of the above, Appellant respectfully submits that the Cayton Declaration and its corresponding evidence is sufficient to establish conception prior to July 20, 2000.

ii. Diligence

The Cayton Declaration also provides sufficient information regarding the activity during the period for which diligence is required to establish such diligence on the part of the applicant. To antedate *Williams*, diligence must be shown from prior to July 20, 2000 until the filing date of the present application, August 17, 2000. As the Cayton Declaration sets forth, the applicant diligently worked toward engaging patent counsel for preparing and filing the present application, discussing the invention with patent counsel, reviewing drafts of the patent application provided by patent counsel, providing timely feedback on the drafts of the patent application to patent counsel, and timely approving the final draft of the patent application and executing the declaration for such patent application and returning such

executed declaration to patent counsel for filing of the patent application, which patent counsel timely filed with the USPTO after receiving the executed declaration.

For instance, the Cayton Declaration provides that Strategic Outsourcing corporation engaged Fulbright & Jaworski L.L.P. as patent counsel for the preparation of the patent application, and wrote a retainer check to Fulbright & Jaworski L.L.P. on June 22, 2000, prior to the July 20, 2000 date of *Williams*, see item 7 of the Cayton Declaration. Fulbright then prepared a draft of the application and sent such draft to the inventors July 28, 2000. Providing a first draft of a patent application in approximately one month after being engaged to do so is very diligent and expeditious on the part of patent counsel. During this time, the inventors were awaiting such a draft to be provided to them from their patent counsel. No further acts could be reasonably expected during this period by the inventors to more diligently seek patent protection. The inventors were unfamiliar with the patent process, and thus reasonably relied on engaged patent counsel that is registered to practice before the USPTO to prepare the patent application.

Upon receiving the draft of the application, the inventors diligently reviewed the draft and provided comments to patent counsel. Patent counsel incorporated the inventors' comments and provided a final draft of the patent application on August 15, 2000. Thus, within 18 days after the draft of the application was sent to the inventors, it had been reviewed by the inventors and Applicant's patent counsel had revised the draft into final form in accordance with the feedback received from the inventors. The inventors executed the formal documents for the final draft of the application on August 16, 2000, and Applicant's patent counsel filed the patent application on August 17, 2000.

The above actions illustrate that Applicant diligently pursued preparation and filing of the present patent application from prior to July 20, 2000 until its filing less than one month later on August 17, 2000.

To be considered diligent, the inventor must generally make a conscious effort to reduce the invention to practice. Here, the inventors were making a conscious effort to constructively reduce the invention to practice through the filing of a patent application. An inventor is not required to rush or take the most efficient development strategy to reduce the invention to practice. See *Justus v. Appenzeller*, 177 USPQ 332, 340 (Pat. Off. Bd. Int.

1971). Short gaps in working toward a reduction to practice during the critical period will not generally negate a finding of diligence. *Mycogen Plant Sci. Inc. v. Monsanto Co.*, 252 F.3d 1306, 58 USPQ2d 1891, 1899 (Fed. Cir. 2001), *petition for cert. filed*, 70 U.S.L.W. 3374 (Nov. 12, 2001). Proof of reasonable diligence does not require a party to work constantly on the invention or to drop all other work. *Bey v. Kollonitsch*, 806 F.2d 1024, 1028, 231 USPQ 967, 970 (Fed. Cir. 1986); *In re Nelson*, 420 F.2d 1079, 1081, 164 USPQ 458, 459 (C.C.P.A. 1970); *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (C.C.P.A. 1966).

Short intervals of inactivity in the preparation, review, and filing of a patent application are generally excused. Intervals greater than those in the present application have been held to be reasonable, and thus not destroy the establishment of diligence. For instance, a two-day lapse between the executing of an application and mailing to the Patent Office, as well as a lapse of approximately two weeks for the inventors to review the application, has been held to fall within the limits of reasonable delay, *see Sletzinger v. Lincoln*, 410 F.2d 808, 161 USPQ 725, 728-29 (C.C.P.A. 1969). A 16-day delay between completion of the drawings and specification and the applicant's review and execution of the application was held by the CCPA to be reasonable. *Walker v. Bailey*, 245 F.2d 486, 114 USPQ 302, 304-05 (C.C.P.A. 1957). A delay of four weeks by one joint inventor to review a patent application was held excusable where the other joint inventor was on vacation for three weeks and was unavailable for another week because of an unexpected illness of a parent. *Reed v. Tornqvist*, 436 F.2d 501, 168 USPQ 462, 465 (C.C.P.A. 1971).

In the present case, the applicant diligently sought patent protection without delays as great as those found acceptable in the above exemplary cases. For instance, prior to July 20, 2000, the applicant's actively sought and obtained patent counsel for the express purpose of constructively reducing the invention to practice (through the filing of a patent application). The applicant engaged Fulbright as its patent counsel on June 22, 2000, and a draft of the application was prepared and sent to the inventors for their review on July 28, 2000. The application was reviewed, finalized and filed on August 17, 2000.

Therefore, Applicant respectfully submits that the above activity set forth in the Cayton Declaration is sufficient to establish diligence on the part of the applicant during the period for which such diligence is required.

In view of the above, the Cayton Declaration is sufficient to antedate *Williams*, and therefore all rejections based on *Williams* should be overturned. For example, the rejection of independent claim 1 as being anticipated by *Williams* should be overturned.

2. *Williams* Fails to Teach All Claim Elements

To anticipate a claim under 35 U.S.C. § 102, a single reference must teach every element of the claim, *see* M.P.E.P. § 2131. *Williams* fails to teach every element of independent claim 1, as discussed below.

Independent claim 1 recites, in part, “executing a computer program, said computer program receiving as input from said employer a desired hiring criteria of said employer; based on said desired hiring criteria of said employer, said computer program generating at least one customized application program that is executable to interact with candidates for employment with said employer and determine whether each of said candidates is qualified for employment with said employer” (emphasis added).

Williams fails to teach at least the above element of claim 1. For instance, *Williams* does not teach a computer program “generating at least one customized application program that is executable to interact with candidates”, as recited by claim 1. While *Williams* mentions receiving an employer’s hiring criteria and using an application program to interact with candidates to screen the candidates against the employer’s hiring criteria, *Williams* provides no express teaching that the application program with which the candidates interact is generated by another computer program. Rather, in *Williams*, such application program could be generated through manual coding by a developer. Again, no express or inherent teaching of a computer program generating the application program with which candidates then interact is present in *Williams*.

Williams provides an overview of its system at column 5, line 40 – column 6, line 9, as follows:

FIG. 1 provides an overview of the pre-employment screening and assessment interview process of the present invention. The process starts when an applicant accesses the system of the present invention via the Internet, telephone or other communication means, and responds to position openings which have been published by the client/employer and have been stored in the system (step 100).

Once preliminary background information regarding the applicant is collected and the system determines that the applicant qualifies to advance to the substantive stages of the interview process (see FIGS. 2-4), the system administers a Bona Fide Occupational Qualifier ("BFOQ") interview (step 200) (see FIG. 5). At this stage, the applicant's responses to questions are monitored to determine alternate directions in which the interview may proceed. If a candidate does not satisfy the BFOQ interview, the candidate is exited from the interview and system (step 250).

Upon completion of the BFOQ interview (step 200), candidates who satisfy the criteria set by the client for this stage will proceed to the Behavioral Assessment Interview stage of the process (step 300) (see FIG. 6). At step 300, the candidate responds to customized and validated assessment questions. The applicant's responses and response times are monitored to determine alternate directions in which the interview may proceed.

Those who "best" match the criteria set by the client for this stage are advised that they pre-qualify for a follow-up interview and are given instructions regarding the follow-up interview (step 400) (see FIG. 7). Those who are not considered a by the system to be best matches are exited from the interview and system (step 350).

In the final step 500, the client/employer conducts a direct interview with the candidate, either immediately following the Behavioral Assessment interview (step 300) or at a later scheduled time, and can then decide whether to offer the position to the candidate in person.

While *Williams* describes a system with which a candidate interacts to perform qualification, *Williams* provides no teaching whatsoever of a computer program that generates an application program with which the candidate interacts. Rather, the application program(s) with which the candidates interact in *Williams* may be manually coded by software developers, for example, instead of being generated by a computer program.

The Final Office Action asserts, in paragraph number 79 thereof, that *Williams* teaches a computer program for generating an application program with which the candidates interact at column 3, lines 30-65. Appellant respectfully disagrees. As discussed below, the relied-upon portion of *Williams* instead merely teaches that subject matter experts (persons familiar with a given position) may be consulted for developing questions that may be entered into a system that is used by the employer for conducting an in-person interview with a candidate. The questions so developed and entered into the system are not used by an application program with which the candidate interacts. Further, *Williams* does not teach that the questions are used by a computer program for generating the application program with

which the candidates interact, but instead the questions may be entered through manual software coding of the system. For instance, column 3, lines 10-65 of *Williams* provides:

A further goal of the invention is to enhance the typical follow-up interview process. Once an initial interview through the system is completed, the system can immediately schedule a candidate for a follow-up interview, to be conducted by either the client/employer or the third-party interviewer at a set time and date. The system can also immediately transfer the candidate to a client/employer or third party interviewer. This feature reduces the labor and time typically expended in contacting applicants and increases the probability that an applicant will be present for a follow-up interview. The follow-up interview is conducted in person or by telephone and consists of open-ended follow-up questions that are developed by either the process or the client/employer. These questions are printed on the applicant's interview report generated by the system.

In addition, a goal of the process is to provide the client with candidate information. The client has the ability to access candidate information via internet based technology and/or through reports produced by the system and electronically sent to the client.

Another goal of the present invention is to administer interview questions that best exemplify the characteristics of the position. The present invention is able to provide this feature through a profiling process in which background information regarding the position, such as tasks performed and work environment, is obtained and entered into the system. The information is then analyzed to determine ideal characteristics for a position, including skills, abilities, and behavioral traits.

The profiling process begins with a panel of Subject Matter Experts who are consulted to understand which attributes are necessary to perform well in a given position.

A Subject Matter Expert is defined as a person who: 1) has been or is currently an incumbent in the position, or 2) has supervised incumbents holding the position, or 3) has trained incumbents for the position, or 4) has recruited applicants for the position.

Once interview questions are formulated based on the consultation, they are administered to individuals currently holding the position who are considered to be performing at a high level. The individuals are asked to determine the relative importance of tasks associated with the position. The client next examines the proposed list of questions. In addition, actual workplace observations are conducted and recorded. While at the workplace, documents used in the normal course of business maybe collected to provide greater insight into the characteristics of the position. Once all data from these steps is finally collected, a staff containing members with psychological training is implemented to create definitions and standards for various aspects

of the position. When the definitions and standards are complete and approved by the client, the actual interview for candidates is then developed and entered into the system.

As can be seen, the above portion of *Williams* provides no teaching whatsoever of a computer program generating an application program with which candidates interact. Rather, the above portion of *Williams* merely teaches that subject matter experts (persons familiar with a given position) may be consulted for developing questions that may be entered into a system that is used by the employer for conducting an in-person interview with a candidate. The questions so developed and entered into the system are not used by an application program with which the candidate interacts. Also, the questions may be entered into the system through manual coding of software developers, rather than by a computer program for generating the application program with which the candidates interact. Thus, the above teaching of *Williams* fails to anticipate the above element of claim 1.

Accordingly, *Williams* fails to teach all element of independent claim 1, and thus fails to anticipate claim 1 under 35 U.S.C. § 102. Therefore, the rejection of claim 1 should be overturned for this further reason.

Claims 2, 8-12, 17-26, and 28-29 each depend either directly or indirectly from independent claim 1, and are thus likewise believed to be allowable at least based on their dependency from claim 1 for the reasons discussed above. Accordingly, Appellant respectfully requests that the rejection of claims 2, 8-12, 17-26, and 28-29 also be overturned.

Dependent Claim 6

Dependent claim 6 depends from independent claim 1 and, thus, includes all of the limitations of independent claim 1 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 6 is allowable at least because of its dependence from claim 1 for the reasons discussed above.

Further, claim 6 recites “wherein said computer program receiving said desired hiring criteria further includes: receiving said desired hiring criteria from a user interface.” *Williams* fails to teach such a user interface of a computer program for receiving the employer’s desired hiring criteria. Indeed, in addressing claim 35, the Final Office Action concedes in paragraph number 56 thereof that “Williams fails to expressly disclose wherein

said computer program includes a user interface for interacting with said employer to receive as input said desired hiring criteria from said employer.”

Thus, for at least the above reasons, the rejection of claim 6 should be overturned.

Dependent Claim 7

Dependent claim 7 depends from claim 6, which depends from claim 1, and thus claim 7 includes all of the limitations of claims 1 and 6 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 7 is allowable at least because of its dependence from claims 1 and 6 for the reasons discussed above.

Further, claim 7 recites “wherein said user interface is a separate program executable to communicate with said computer program.” *Williams* fails to teach such a user interface, and particularly such a user interface that is a separate program that is executable to communicate with the recited computer program.

Thus, for at least the above reasons, the rejection of claim 7 should be overturned.

Dependent Claim 13

Dependent claim 13 depends from independent claim 1, and thus includes all of the limitations of claim 1 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 13 is allowable at least because of its dependence from claim 1 for the reasons discussed above.

Further, claim 13 recites “wherein said generating step includes: generating a plurality of said customized application program.” *Williams* fails to teach a computer program that generates a plurality of customized application programs with which candidates can interact.

Thus, for at least the above reasons, the rejection of claim 13 should be overturned.

Dependent Claim 14

Dependent claim 14 depends from claim 13, which depends from claim 1, and thus claim 14 includes all of the limitations of claims 1 and 13 in addition to its own supplied

limitations. It is respectfully submitted that dependent claim 14 is allowable at least because of its dependence from claims 1 and 13 for the reasons discussed above.

Further, claim 14 recites “wherein each of said plurality of customized application programs is executable to enable interaction with candidates via a different communication platform.” *Williams* fails to teach a computer program that generates a plurality of customized application programs each of which a candidate can interact via a different communication platform.

Thus, for at least the above reasons, the rejection of claim 14 should be overturned.

Dependent Claim 15

Dependent claim 15 depends from independent claim 1, and thus includes all of the limitations of claim 1 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 15 is allowable at least because of its dependence from claim 1 for the reasons discussed above.

Further, claim 15 recites “said computer program receiving as input from said employer preferences of said employer as to characteristics of said at least one customized application program.” *Williams* fails to teach a computer program that receives input of employer preferences as to characteristics of a customized application program.

Thus, for at least the above reasons, the rejection of claim 15 should be overturned.

Dependent Claim 16

Dependent claim 16 depends from claim 15, which depends from claim 1, and thus claim 16 includes all of the limitations of claims 1 and 15 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 16 is allowable at least because of its dependence from claims 1 and 15 for the reasons discussed above.

Further, claim 16 recites “wherein said computer program receives as input from said employer indication of one or more communication platforms on which said at least one customized application program is to enable access by candidates.” *Williams* fails to teach a computer program that receives input from an employer indicating one or more

communication platforms on which a customized application program is to enable access by candidates.

Thus, for at least the above reasons, the rejection of claim 16 should be overturned.

Dependent Claims 78-80

Dependent claim 78 depends from claim 15, which depends from claim 1, and thus claim 78 includes all of the limitations of claims 1 and 15 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 78 is allowable at least because of its dependence from claims 1 and 15 for the reasons discussed above.

Further, claim 78 recites:

The method of claim 15 wherein said input of employer preferences as to characteristics of said at least one customized application program received by said computer program includes at least one selected from the group consisting of:

input indicating whether the at least one customized application program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one customized application program is to schedule future testing with a candidate determined to be qualified for a position.

Williams fails to teach receiving input of employer preferences as to characteristics of said at least one customized application program as recited by claim 78. Thus, for at least this further reason, the rejection of claim 78 should be overturned.

Dependent claims 79-80 each depends from claim 78, which depends from claim 15, and thus claims 79-80 each includes all of the limitations of claims 1, 15, and 78 in addition

to their own supplied limitations. It is respectfully submitted that dependent claims 79-80 are allowable at least because of their dependence from claims 1, 15, and 78 for the reasons discussed above.

Independent Claim 30 and Dependent Claims 31-34, 36-40, 43-44, 46-53, and 81

Independent claim 30 is not anticipated by *Williams* because: 1) *Williams* is not prior art to the claim in view of the Cayton Declaration which antedates the July 20, 2000 date of *Williams*, and 2) *Williams* fails to teach all elements of the claim.

1. Cayton Declaration Antedates *Williams*

As discussed above with independent claim 1, Applicant submitted the Cayton Declaration April 6, 2005 under 35 C.F.R. §1.131, which antedates *Williams*, and therefore all claim rejections based on *Williams*, including the rejection of independent claim 30, should therefore be overturned.

2. *Williams* Fails to Teach All Claim Elements

To anticipate a claim under 35 U.S.C. § 102, a single reference must teach every element of the claim, *see* M.P.E.P. § 2131. *Williams* fails to teach every element of independent claim 30, as discussed below.

Independent claim 30 recites, in part, “a computer program executable by said processor-based device to receive as input desired hiring criteria of said employer and generate at least one application program” (emphasis added).

Williams fails to teach at least the above element of claim 30. For instance, *Williams* does not teach a computer program that is executable by a processor-based device to “generate at least one application program”, as recited by claim 30. While *Williams* mentions receiving an employer’s hiring criteria and using an application program to interact with candidates to screen the candidates against the employer’s hiring criteria, *Williams* provides no teaching that the application program with which the candidates interact is generated by another computer program. Rather, in *Williams*, such application program could be generated through manual coding by a developer. Again, no express or inherent teaching of a

computer program generating the application program with which candidates then interact is present in *Williams*.

Accordingly, *Williams* fails to teach all element of independent claim 30, and thus fails to anticipate claim 30 under 35 U.S.C. § 102. Therefore, the rejection of claim 30 should be overturned for this further reason.

Claims 31-34, 36-40, 43-44, 46-53, and 81 each depend either directly or indirectly from independent claim 30, and are thus likewise believed to be allowable at least based on their dependency from claim 30 for the reasons discussed above. Accordingly, Appellant respectfully requests that the rejection of claims 31-34, 36-40, 43-44, 46-53, and 81 also be overturned.

Dependent Claim 41

Dependent claim 41 depends from independent claim 30, and thus includes all of the limitations of claim 30 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 41 is allowable at least because of its dependence from claim 30 for the reasons discussed above.

Further, claim 41 recites “wherein said computer program is executable to generate a plurality of said application programs.” *Williams* fails to teach a computer program that is executable to generate an application program, and further fails to teach a computer program that is executable to generate a plurality of application programs.

Thus, for at least the above reasons, the rejection of claim 41 should be overturned.

Dependent Claim 42

Dependent claim 42 depends from claim 41, which depends from claim 30, and thus claim 42 includes all of the limitations of claims 30 and 41 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 42 is allowable at least because of its dependence from claims 30 and 41 for the reasons discussed above.

Further, claim 42 recites “wherein each of said plurality of application programs is executable to enable interaction with candidates via a different communication platform.”

Williams fails to teach a computer program that is executable to generate an application program, and further fails to teach a computer program that is executable to generate a plurality of application programs that are each executable to enable interaction with candidates via a different communication platform.

Thus, for at least the above reasons, the rejection of claim 42 should be overturned.

Dependent Claim 82

Dependent claim 82 depends from claim 81, which depends from claim 30, and thus claim 82 includes all of the limitations of claims 30 and 81 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 82 is allowable at least because of its dependence from claims 30 and 81 for the reasons discussed above.

Further, claim 82 recites “wherein said computer program is operable to receive a preference of said employer as to one or more communication platforms on which said at least one application program is to enable access by candidates.” *Williams* fails to teach a computer program that is operable to receive such a preference of an employer..

Thus, for at least the above reasons, the rejection of claim 82 should be overturned.

Dependent Claim 83

Dependent claim 83 depends from claim 81, which depends from claim 30, and thus claim 83 includes all of the limitations of claims 30 and 81 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 83 is allowable at least because of its dependence from claims 30 and 81 for the reasons discussed above.

Further, claim 83 recites:

The system of claim 81 wherein said input of employer preferences as to operational characteristics of said at least one application program includes at least one selected from the group consisting of:

input indicating whether the at least one application program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one

or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one application program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one application program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one application program is to schedule future testing with a candidate determined to be qualified for a position.

Williams fails to teach a computer program that is operable to receive such input of employer preferences as to operational characteristics as recited by claim 83.

Thus, for at least the above reasons, the rejection of claim 83 should be overturned.

Independent Claim 54 and Dependent Claims 55 and 57-61

Independent claim 54 is not anticipated by *Williams* because: 1) *Williams* is not prior art to the claim in view of the Cayton Declaration which antedates the July 20, 2000 date of *Williams*, and 2) *Williams* fails to teach all elements of the claim.

1. Cayton Declaration Antedates *Williams*

As discussed above with independent claim 1, Applicant submitted the Cayton Declaration April 6, 2005 under 35 C.F.R. § 1.131, which antedates *Williams*, and therefore all claim rejections based on *Williams*, including the rejection of independent claim 54, should therefore be overturned.

2. *Williams* Fails to Teach All Claim Elements

To anticipate a claim under 35 U.S.C. § 102, a single reference must teach every element of the claim, *see* M.P.E.P. § 2131. *Williams* fails to teach every element of independent claim 54, as discussed below.

Independent claim 54 recites, in part, “code for generating at least one qualification program for interacting with candidates in accordance with said received preferences and determining whether each of said candidates qualifies for a position of employment with said employer” (emphasis added).

Williams fails to teach at least the above element of claim 54. For instance, *Williams* does not teach code for “generating at least one qualification program for interacting with candidates”, as recited by claim 54. While *Williams* mentions receiving an employer’s hiring criteria and using an application program to interact with candidates to screen the candidates against the employer’s hiring criteria, *Williams* provides no teaching that the application program with which the candidates interact is generated by another computer program. Rather, in *Williams*, such application program could be generated through manual coding by a developer. Again, no express or inherent teaching of a computer program generating the application program with which candidates then interact is present in *Williams*.

Accordingly, *Williams* fails to teach all element of independent claim 54, and thus fails to anticipate claim 54 under 35 U.S.C. § 102. Therefore, the rejection of claim 54 should be overturned for this further reason.

Claims 55 and 57-61 each depend either directly or indirectly from independent claim 54, and are thus likewise believed to be allowable at least based on their dependency from claim 54 for the reasons discussed above. Accordingly, Appellant respectfully requests that the rejection of claims 55 and 57-61 also be overturned.

Dependent Claim 56

Dependent claim 56 depends from independent claim 54, and thus includes all of the limitations of claim 54 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 56 is allowable at least because of its dependence from claim 54 for the reasons discussed above.

Further, claim 56 recites “wherein said code for presenting and said code for generating are each part of separate computer programs that are capable of communicating with each other.” *Williams* fails to teach code for presenting and code for generating which are each part of separate computer programs that are capable of communicating with each other.

Thus, for at least the above reasons, the rejection of claim 56 should be overturned.

Dependent Claim 84

Dependent claim 84 depends from claim 58, which depends from claim 54, and thus claim 84 includes all of the limitations of claims 54 and 58 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 84 is allowable at least because of its dependence from claims 54 and 58 for the reasons discussed above.

Further, claim 84 recites “wherein an indication of said at least one communication platform is received as one of said preferences.” *Williams* fails to teach a computer program that is operable to receive such an indication of a communication platform as recited by claim 84.

Thus, for at least the above reasons, the rejection of claim 84 should be overturned.

Dependent Claim 85

Dependent claim 85 depends from independent claim 54, and thus includes all of the limitations of claim 54 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 85 is allowable at least because of its dependence from claim 54 for the reasons discussed above.

Further, claim 85 recites:

The computer executable program code of claim 54 wherein said user interface for receiving preferences from said employer is operable to receive at least one selected from the group consisting of:

input indicating whether the at least one qualification program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one qualification program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one qualification program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one qualification program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one qualification program is to schedule future testing with a candidate determined to be qualified for a position.

Williams fails to teach a user interface for receiving preferences from an employer as recited by claim 85. Thus, for at least this further reason, the rejection of claim 85 should be overturned.

Independent Claim 62 and Dependent Claims 63-76 and 86

Independent claim 62 is not anticipated by *Williams* because: 1) *Williams* is not prior art to the claim in view of the Cayton Declaration which antedates the July 20, 2000 date of *Williams*, and 2) *Williams* fails to teach all elements of the claim.

1. Cayton Declaration Antedates *Williams*

As discussed above with independent claim 1, Applicant submitted the Cayton Declaration April 6, 2005 under 35 C.F.R. § 1.131, which antedates *Williams*, and therefore all claim rejections based on *Williams*, including the rejection of independent claim 62, should therefore be overturned.

2. *Williams* Fails to Teach All Claim Elements

To anticipate a claim under 35 U.S.C. § 102, a single reference must teach every element of the claim, *see* M.P.E.P. § 2131. *Williams* fails to teach every element of independent claim 62, as discussed below.

Independent claim 62 recites, in part, “allowing an employer access to a computer executable program, wherein said computer executable program enables said employer to generate at least one customized application program based on a desired hiring criteria of said employer, said desired hiring criteria defining at least one attribute desired to be possessed by a candidate to be considered qualified for a position of employment” (emphasis added).

Williams fails to teach at least the above element of claim 62. For instance, *Williams* does not teach a computer executable program that enables an employer to generate at least one customized application program based on a desired hiring criteria of the employer”, as recited by claim 62. While *Williams* mentions receiving an employer’s hiring criteria and using an application program to interact with candidates to screen the candidates against the employer’s hiring criteria, *Williams* provides no teaching that the application program with

which the candidates interact is generated by another computer program. Rather, in *Williams*, such application program could be generated through manual coding by a developer. Again, no express or inherent teaching of a computer program generating the application program with which candidates then interact is present in *Williams*.

Accordingly, *Williams* fails to teach all element of independent claim 62, and thus fails to anticipate claim 62 under 35 U.S.C. § 102. Therefore, the rejection of claim 62 should be overturned for this further reason.

Claims 63-76 and 86 each depend either directly or indirectly from independent claim 62, and are thus likewise believed to be allowable at least based on their dependency from claim 62 for the reasons discussed above. Accordingly, Appellant respectfully requests that the rejection of claims 63-76 and 86 also be overturned.

Dependent Claim 87

Dependent claim 87 depends from claim 86, which depends from claim 62, and thus claim 87 includes all of the limitations of claims 62 and 86 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 87 is allowable at least because of its dependence from claims 62 and 86 for the reasons discussed above.

Further, claim 87 recites:

The business method of claim 86 wherein said input of employer preferences as to operational characteristics of said at least one customized application program received by said computer executable program includes at least one selected from the group consisting of:

input indicating whether the at least one customized application program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one customized application program is to schedule future testing with a candidate determined to be qualified for a position.

Williams fails to teach receiving input of employer preferences as to operational characteristics of a customized application program as recited by claim 87. Thus, for at least this further reason, the rejection of claim 87 should be overturned.

B. Rejections under 35 U.S.C. §103(a) over *Williams*

Claims 27, 45, and 77 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Williams*. Appellant respectfully traverses these rejections.

To establish a prima facie case of obviousness, three basic criteria must be met. *See* M.P.E.P. § 2143. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the applied references must teach or suggest all the claim limitations. Without conceding any other criteria, the applied *Williams* reference is not prior art to claims 27, 45, and 77 as the applicant has antedated it as discussed above with claim 1. Further, *Williams* fails to teach or suggest all elements of the claims, as discussed hereafter.

Claim 27

Dependent claim 27 depends indirectly from claim 1, and thus inherits all of the limitations of claim 1 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 27 is allowable at least because of its dependence from claim 1 for the reasons discussed above.

Claim 44

Dependent claim 44 depends indirectly from claim 30, and thus inherits all of the limitations of claim 30 in addition to its own supplied limitations. It is respectfully submitted that dependent claim 44 is allowable at least because of its dependence from claim 30 for the reasons discussed above.

Claim 77

Dependent claim 77 depends indirectly from claim 62, and thus inherits all of the limitations of claim 62 in addition to its own supplied limitations. It is respectfully submitted

that dependent claim 77 is allowable at least because of its dependence from claim 62 for the reasons discussed above.

C. Rejections under 35 U.S.C. §103(a) over *Williams* in view of *Smith*

Claims 3-5, 35, and 88-92 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Williams* in view of *Smith*.

Dependent claims 3-5, 35, and 88-92 each depend either directly or indirectly from one of independent claims 1, 30, 54 and 62, and thus inherit all limitations of the respective independent claims from which they depend. It is respectfully submitted that dependent claims 3-5, 35, and 88-92 are allowable not only because of their dependency from their respective independent claims for the reasons discussed above, but also in view of their novel claim features (which both narrow the scope of the particular claims and compel a broader interpretation of the respective base claim from which they depend).

D. CONCLUSION

In view of the above, Appellant respectfully requests that the outstanding rejections raised in the Final Office Action be overturned. Appellant includes a listing of the currently pending claims in the attached Claims Appendix. Further, Appellant includes the Cayton Declaration as evidence in the attached Evidence Appendix. And, Appellant includes an attached Related Proceedings Appendix, which indicates that no related proceedings are referenced.

Dated: May 2, 2006

Respectfully submitted,

By 

Jody C. Bishop

Registration No.: 44,034

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-8007

(214) 855-8200 (Fax)

Attorney for Applicant

VIII. CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 09/641,021

1. A method for qualifying candidates for employment with an employer, said method comprising:

executing a computer program, said computer program receiving as input from said employer a desired hiring criteria of said employer;

based on said desired hiring criteria of said employer, said computer program generating at least one customized application program that is executable to interact with candidates for employment with said employer and determine whether each of said candidates is qualified for employment with said employer;

allowing said candidates access to the at least one generated customized application program; and

responsive to input from each of said candidates to the at least one generated customized application program, said at least one generated customized application program automatically determining whether each of said candidates qualifies for a position of employment with the employer.

2. The method of claim 1 wherein said desired hiring criteria includes at least one criteria selected from the group consisting of:

candidate's education, candidate's work experience, candidate's possessing a particular license, candidate's language skills, and candidate's computer skills.

3. The method of claim 1 wherein said computer program provides a predetermined list of hiring criteria for selection by said employer as said desired hiring criteria.

4. The method of claim 3 wherein said computer program allows said employer to input additional hiring criteria not included on said predetermined list.

5. The method of claim 1 wherein said computer program includes a user interface for interacting with said employer to receive as input said desired hiring criteria from said employer.

6. The method of claim 1 wherein said computer program receiving said desired hiring criteria further includes:

receiving said desired hiring criteria from a user interface.

7. The method of claim 6 wherein said user interface is a separate program executable to communicate with said computer program.

8. The method of claim 1 wherein said at least one customized application program is executable to interact with a candidate to enable said candidate to self-administer a qualification session for a position of employment with said employer.

9. The method of claim 1 wherein said at least one customized application program enables access by one or more candidates via at least one communication platform.

10. The method of claim 9 wherein said at least one communication platform includes platforms selected from the group consisting of: telephony-based platform, web-based platform, and other processor-based platforms.

11. The method of claim 9 wherein said at least one customized application program includes an IVR application that enables access by one or more candidates via telephone.

12. The method of claim 9 wherein said at least one customized application program includes a web-based application that enables access by one or more candidates via a processor-based device via the World Wide Web.

13. The method of claim 1 wherein said generating step includes:
generating a plurality of said customized application program.

14. The method of claim 13 wherein each of said plurality of customized application programs is executable to enable interaction with candidates via a different communication platform.

15. The method of claim 1 further comprising:
said computer program receiving as input from said employer preferences of said employer as to characteristics of said at least one customized application program.

16. The method of claim 15 wherein said computer program receives as input from said employer indication of one or more communication platforms on which said at least one customized application program is to enable access by candidates.

17. The method of claim 1 wherein said at least one customized application program is executable to assist in further screening of candidates beyond determining whether based on said desired hiring criteria said candidates qualify for a position of employment with the employer.

18. The method of claim 17 wherein said at least one customized application program is executable to schedule future testing with a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer.

19. The method of claim 17 wherein said at least one customized application program is executable to administer testing of a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer.

20. The method of claim 17 wherein said at least one customized application program is executable to schedule a future personal interview with hiring personnel of the employer and a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer.

21. The method of claim 20 wherein said at least one customized application program interacts with a calendaring program to schedule said future personal interview at a time available for said hiring personnel.

22. The method of claim 17 wherein said at least one customized application program is executable to forward supplemental materials to hiring personnel of the employer for a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer.

23. The method of claim 22 wherein said supplemental materials include at least one of the materials selected from the group consisting of: candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript.

24. The method of claim 22 wherein said at least one customized application is executable to forward said supplemental materials to hiring personnel electronically.

25. The method of claim 24 wherein said at least one customized application is executable to forward said supplemental materials to hiring personnel via at least one communication method selected from the group consisting of: e-mail and fax.

26. The method of claim 22 further comprising the step of:
said at least one customized application receiving said supplemental materials from a candidate.

27. The method of claim 26 wherein said at least one customized application receives said supplemental materials via at least one of the following methods: fax, e-mail, and digital imaging device.

28. The method of claim 1 further comprising the step of:
said at least one customized application program outputting to a candidate determined by said customized application program as not qualifying for a position of employment with the employer one or more reasons for said candidate not qualifying.

29. The method of claim 1 further comprising the step of:
storing to a database information about a candidate received by said at least one customized application.

30. A system for use in qualifying candidates for employment with an employer, said system comprising:
a processor-based device; and
a computer program executable by said processor-based device to receive as input desired hiring criteria of said employer and generate at least one application program, wherein said desired hiring criteria specifies at least one attribute to be possessed by a candidate to be considered qualified for a position of employment, and wherein said at least one application program is executable to interact with candidates and determine whether each of said candidates qualifies for said position of employment with said employer.

31. The system of claim 30 wherein said processor-based device is a device selected from the group consisting of: PC, workstation, laptop computer, and PDA.

32. The system of claim 30 wherein said processor-based device is a server computer.

33. The system of claim 32 wherein said server computer comprises a web server.

34. The system of claim 30 wherein said at least one attribute includes an attribute concerning one selected from the group consisting of:

candidate's education, candidate's work experience, candidate's possessing a particular license, candidate's language skills, and candidate's computer skills.

35. The system of claim 30 wherein said computer program includes a user interface for interacting with said employer to receive as input said desired hiring criteria.

36. The system of claim 30 wherein said at least one application program is executable to interact with a candidate to enable said candidate to self-administer a qualification session for a position of employment with said employer.

37. The system of claim 30 wherein said at least one application program enables access by one or more candidates via at least one communication platform.

38. The system of claim 38 wherein said at least one communication platform includes platforms selected from the group consisting of: telephony-based platform, web-based platform, and other processor-based platforms.

39. The system of claim 37 wherein said at least one application program includes an IVR application that enables access by one or more candidates via telephone.

40. The system of claim 37 wherein said at least one application program includes a web-based application that enables access by one or more candidates via a processor-based device via the World Wide Web.

41. The system of claim 30 wherein said computer program is executable to generate a plurality of said application programs.

42. The system of claim 41 wherein each of said plurality of application programs is executable to enable interaction with candidates via a different communication platform.

43. The system of claim 30 further including an input device communicatively coupled to said processor-based device to enable candidates to input supplemental materials to said processor-based device.

44. The system of claim 43 wherein said supplemental materials include at least one of the materials selected from the group consisting of: candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript.

45. The system of claim 43 wherein said input device includes at least one device selected from the group consisting of fax machine and digital imaging device.

46. The system of claim 43 wherein said at least one application program is executable to electronically communicate said supplemental materials to hiring personnel.

47. The system of claim 46 wherein said at least one application program is executable to electronically communicate said supplemental materials via at least one communication method selected from the group consisting of e-mail and fax.

48. The system of claim 30 further comprising a data storage device communicatively coupled to said processor-based device to enable storage of data received by said at least one application program.

49. The system of claim 48 wherein said data storage device is at least one device selected from the group consisting of: hard drive, floppy disk, Compact Disc (CD), Digital Versatile Disc (DVD), and other data storage devices.

50. The system of claim 30 wherein said processor-based device is communicatively coupled to a communication network to enable access by said employer to said computer program via said communication network.

51. The system of claim 50 wherein said communication network is a network selected from the group consisting of: PSTN, wireless communication network, a proprietary network, general purpose processor-based information network, dedicated communication lines, computer network, direct PC to PC connection, LAN, WAN, modem to modem connection, Internet, Intranet, Extranet, or any combination thereof.

52. The system of claim 51 wherein said processor-based device is communicatively coupled to a communication network to enable access by said candidates to said at least one application program via said communication network.

53. The system of claim 52 wherein said communication network is a network selected from the group consisting of: PSTN, wireless communication network, a proprietary network, general purpose processor-based information network, dedicated communication lines, computer network, direct PC to PC connection, LAN, WAN, modem to modem connection, Internet, Intranet, Extranet, or any combination thereof.

54. Computer executable program code stored to a computer-readable medium said code for generating customized programs for qualifying candidates for employment with an employer, said computer executable program code comprising:

- code for presenting a user interface for receiving hiring criteria from an employer;
- code for presenting a user interface for receiving preferences from said employer regarding operational characteristics of at least one qualification program to be generated;
- and

- code for generating at least one qualification program for interacting with candidates in accordance with said received preferences and determining whether each of said candidates qualifies for a position of employment with said employer.

55. The computer executable program code of claim 54 wherein said code for presenting and code for generating are part of a common computer program.

56. The computer executable program code of claim 54 wherein said code for presenting and said code for generating are each part of separate computer programs that are capable of communicating with each other.

57. The computer executable program code of claim 54 wherein said at least one qualification program is executable to interact with a candidate to enable said candidate to self-administer a qualification session for a position with said employer.

58. The computer executable program code of claim 54 wherein said at least one qualification program enables access by one or more candidates via at least one communication platform.

59. The computer executable program code of claim 58 wherein said at least one communication platform includes platforms selected from the group consisting of: telephony-based platform, web-based platform, and other processor-based platforms.

60. The computer executable program code of claim 58 wherein said at least one qualification program includes an IVR application that enables access by one or more candidates via telephone.

61. The computer executable program code of claim 58 wherein said at least one qualification program includes a web-based application that enables access by one or more candidates via a processor-based device via the World Wide Web.

62. A business method for qualifying candidates for employment with an employer, said business method comprising:

allowing an employer access to a computer executable program, wherein said computer executable program enables said employer to generate at least one customized application program based on a desired hiring criteria of said employer, said desired hiring criteria defining at least one attribute desired to be possessed by a candidate to be considered qualified for a position of employment; and

allowing candidates access to the at least one generated customized application program; and

responsive to input from each of said candidates to the at least one customized application program, said at least one customized application program automatically determining whether each of said candidates qualifies for said position of employment with the employer.

63. The business method of claim 62 wherein said allowing an employer access further comprises:

allowing said employer access to said computer executable program via a communication network.

64. The business method of claim 63 wherein said communication network is a network selected from the group consisting of:

PSTN, wireless communication network, a proprietary network, general purpose processor-based information network, dedicated communication lines, computer network, direct PC to PC connection, LAN, WAN, modem to modem connection, Internet, Intranet, Extranet, or any combination thereof.

65. The business method of claim 62 wherein said allowing candidates access to the at least one generated customized application program further comprises:

allowing said candidates access to said at least one customized application program via a communication network.

66. The business method of claim 65 wherein said communication network is a network selected from the group consisting of:

PSTN, wireless communication network, a proprietary network, general purpose processor-based information network, dedicated communication lines, computer network, direct PC to PC connection, LAN, WAN, modem to modem connection, Internet, Intranet, Extranet, or any combination thereof.

67. The business method of claim 62 wherein said at least one customized application program is executable to assist in further screening of candidates beyond determining whether based on said desired hiring criteria said candidates qualify for a position of employment with the employer.

68. The business method of claim 67 further comprising:

if determined by said at least one customized application program based on said desired hiring criteria that a candidate is qualified for a position of employment with the employer, said at least one customized application program executing to schedule future testing with said candidate.

69. The business method of claim 68 further comprising:

if determined by said at least one customized application program based on said desired hiring criteria that a candidate is qualified for a position of employment with the employer, said at least one customized application program executing to administer testing of said candidate.

70. The business method of claim 67 further comprising:

if determined by said at least one customized application program based on said desired hiring criteria that a candidate is qualified for a position of employment with the employer, said at least one customized application program executing to schedule a future personal interview with hiring personnel of the employer and said candidate.

71. The business method of claim 70 wherein said at least one customized application program interacts with a calendaring program to schedule said future personal interview at a time available for said hiring personnel.

72. The business method of claim 67 further comprising:

if determined by said at least one customized application program based on said desired hiring criteria that a candidate is qualified for a position of employment with the employer, said at least one customized application program executing to forward supplemental materials to hiring personnel of the employer for said candidate.

73. The business method of claim 72 wherein said supplemental materials include at least one of the materials selected from the group consisting of: candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript.

74. The business method of claim 72 wherein said at least one customized application is executable to forward said supplemental materials to hiring personnel electronically.

75. The business method of claim 74 wherein said at least one customized application is executable to forward said supplemental materials to hiring personnel via at least one communication method selected from the group consisting of: e-mail and fax.

76. The business method of claim 72 further comprising the step of:
said at least one customized application receiving said supplemental materials from a candidate.

77. The business method of claim 76 wherein said at least one customized application receives said supplemental materials via at least one of the following methods: fax, e-mail, and digital imaging device.

78. The method of claim 15 wherein said input of employer preferences as to characteristics of said at least one customized application program received by said computer program includes at least one selected from the group consisting of:

input indicating whether the at least one customized application program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one customized application program is to schedule future testing with a candidate determined to be qualified for a position.

79. The method of claim 78 wherein said generated at least one customized application program operates in accordance with the input employer preferences.

80. The method of claim 78 wherein said supplemental material include at least one of the materials selected from the group consisting of:

candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript.

81. The system of claim 30 wherein said computer program is further executable to receive as input preferences of said employer as to operational characteristics of said at least one application program to be generated.

82. The system of claim 81 wherein said computer program is operable to receive a preference of said employer as to one or more communication platforms on which said at least one application program is to enable access by candidates.

83. The system of claim 81 wherein said input of employer preferences as to operational characteristics of said at least one application program includes at least one selected from the group consisting of:

input indicating whether the at least one application program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one application program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one application program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one application program is to schedule future testing with a candidate determined to be qualified for a position.

84. The computer executable program code of claim 58 wherein an indication of said at least one communication platform is received as one of said preferences.

85. The computer executable program code of claim 54 wherein said user interface for receiving preferences from said employer is operable to receive at least one selected from the group consisting of:

input indicating whether the at least one qualification program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one qualification program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one qualification program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one qualification program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one qualification program is to schedule future testing with a candidate determined to be qualified for a position.

86. The business method of claim 62 further comprising:

receiving as input to said computer executable program, preferences of said employer as to operational characteristics of said at least one customized application program to be generated.

87. The business method of claim 86 wherein said input of employer preferences as to operational characteristics of said at least one customized application program received by said computer executable program includes at least one selected from the group consisting of:

input indicating whether the at least one customized application program is to automatically schedule an interview with candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to interact with a calendaring program to schedule an interview with candidates determined to be qualified for a position, input indicating one or more interviewers with whom an interview is to be scheduled for candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to request supplemental material from candidates determined to be qualified for a position, input indicating whether the at least one customized application program is to forward supplemental material received from qualified candidates to one or more hiring managers, and input indicating whether the at least one customized application program is to schedule future testing with a candidate determined to be qualified for a position.

88. The method of claim 1 wherein said computer program receiving as input a desired hiring criteria comprises receiving manually inputted hiring criteria from said employer, and wherein said computer program generating said at least one customized application program comprises said computer program automatically integrating the manually inputted hiring criteria into the at least one customized application program.

89. The method of claim 1 wherein said computer program receiving as input a desired hiring criteria comprises:

receiving said input defining any hiring criteria desired for said position of employment, wherein said input desired hiring criteria is not limited to a selection of hiring criteria pre-defined by said computer program.

90. The system of claim 30 wherein said input of said desired hiring criteria comprises input defining a desired hiring criteria that is not pre-defined by said computer program.

91. The computer executable program code of claim 54 wherein said code for presenting a user interface for receiving hiring criteria from an employer further comprises:
code for presenting said user interface for receiving hiring criteria that is not pre-defined by said computer executable program code.

92. The business method of claim 62 further comprising:
automatically integrating, into the generated at least one customized application program, said desired hiring criteria that is manually input into the computer executable program.

93-101. (Canceled).

IX. EVIDENCE APPENDIX

Following this page is a copy of the Declaration of Alan Cayton, which the applicant submitted April 6, 2005 under 35 C.F.R. §1.131.

No further evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.



Docket No.: 59428/P001US/10020580
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Alan B. Cayton et al.

Application No.: 09/641,021

Confirmation No.:

Filed: August 17, 2000

Art Unit: 3629

For: **SYSTEM AND METHOD FOR AUTOMATED
SCREENING AND QUALIFICATION OF
EMPLOYMENT CANDIDATES**

Examiner: J. P. Ouellette

**DECLARATION OF ALAN CAYTON
SUBMITTED UNDER 37 C.F.R. 1.131**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

1. My name is Alan Cayton, I am over 21 years of age, and make this declaration based upon my own personal knowledge. All of the statements contained herein are, in all things, true and correct.
2. I am one of the inventors of the invention claimed in the above-identified patent application.
3. Prior to June 12, 2000, I conceived the idea of a system and method for automated screening and qualification of employment candidates as recited in the pending claims of the above-identified patent application.
4. Attached hereto as Exhibit A is a copy of a presentation that I prepared and submitted to Strategic Outsourcing Corporation, prior to June 12, 2000, for the filing of a patent

25514698.1

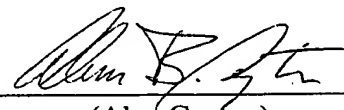
application. The presentation includes figures (substantially as illustrated in FIGURE 1 of the present application) illustrating an embodiment of the present invention. I comprehended these figures consistent with the description of FIGURE 1 in the present application, prior to June 12, 2000.

5. Strategic Outsourcing corporation is the owner, by assignment from the inventors, of the present application. I am Chief Executive Office (CEO) of Strategic Outsourcing corporation. Prior to June 12, 2000, Strategic Outsourcing corporation sought advice from its legal counsel, John Roach, Jr. regarding protecting the intellectual property of the present application. On June 6, 2000, representatives of Strategic Outsourcing corporation met with John Roach, Jr. concerning intellectual property protection for the subject matter of the present application, including copyright and patent protection.
6. Because John Roach, Jr. is not a patent attorney, he referred Strategic Outsourcing corporation to Fulbright & Jaworski L.L.P. as patent counsel. Representatives of Strategic Outsourcing corporation scheduled a meeting with attorneys of Fulbright & Jaworski L.L.P. to discuss representation in this matter, and one such meeting took place June 21, 2000. Between June 6, 2000 and June 21, 2000 teleconferences were conducted between attorneys of Fulbright & Jaworski L.L.P. and John Roach, Jr. and/or representatives of Strategic Outsourcing corporation regarding handling of intellectual property matters by Fulbright & Jaworski L.L.P. and scheduling the June 21, 2000 meeting between the attorneys of Fulbright & Jaworski L.L.P. and Strategic Outsourcing corporation.
7. Strategic Outsourcing corporation engaged Fulbright & Jaworski L.L.P. as patent counsel for the preparation of the patent application, and wrote a retainer check to Fulbright & Jaworski L.L.P. on June 22, 2000.
8. Fulbright & Jaworski L.L.P. began preparation of the present patent application, and Jody Bishop of Fulbright & Jaworski L.L.P. sent me a draft of the patent application on July 28, 2000.

9. I reviewed the draft of the patent application and provided comments regarding the same to my patent counsel.
10. Jody Bishop of Fulbright & Jaworski L.L.P. sent me a final draft of the patent application on August 15, 2000, along with the Declaration and Power of Attorney documents.
11. I reviewed the final draft of the patent application, approved it, executed the Declaration and Power of Attorney documents, and returned the executed documents to my patent counsel on August 16, 2000.
12. My patent counsel, Fulbright & Jaworski L.L.P., filed the patent application and executed Declaration and Power of Attorney documents with the United States Patent and Trademark Office on August 17, 2000.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

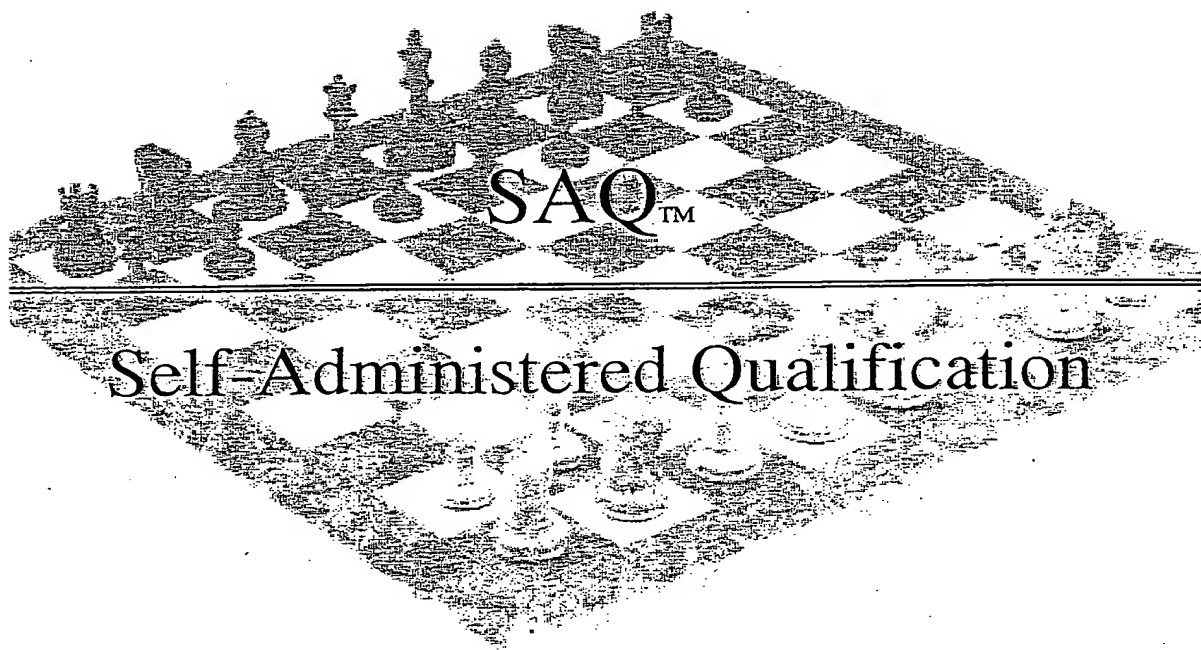
Date: April 5, 2005


(Alan Cayton)

Strategic Outsourcing Corporation

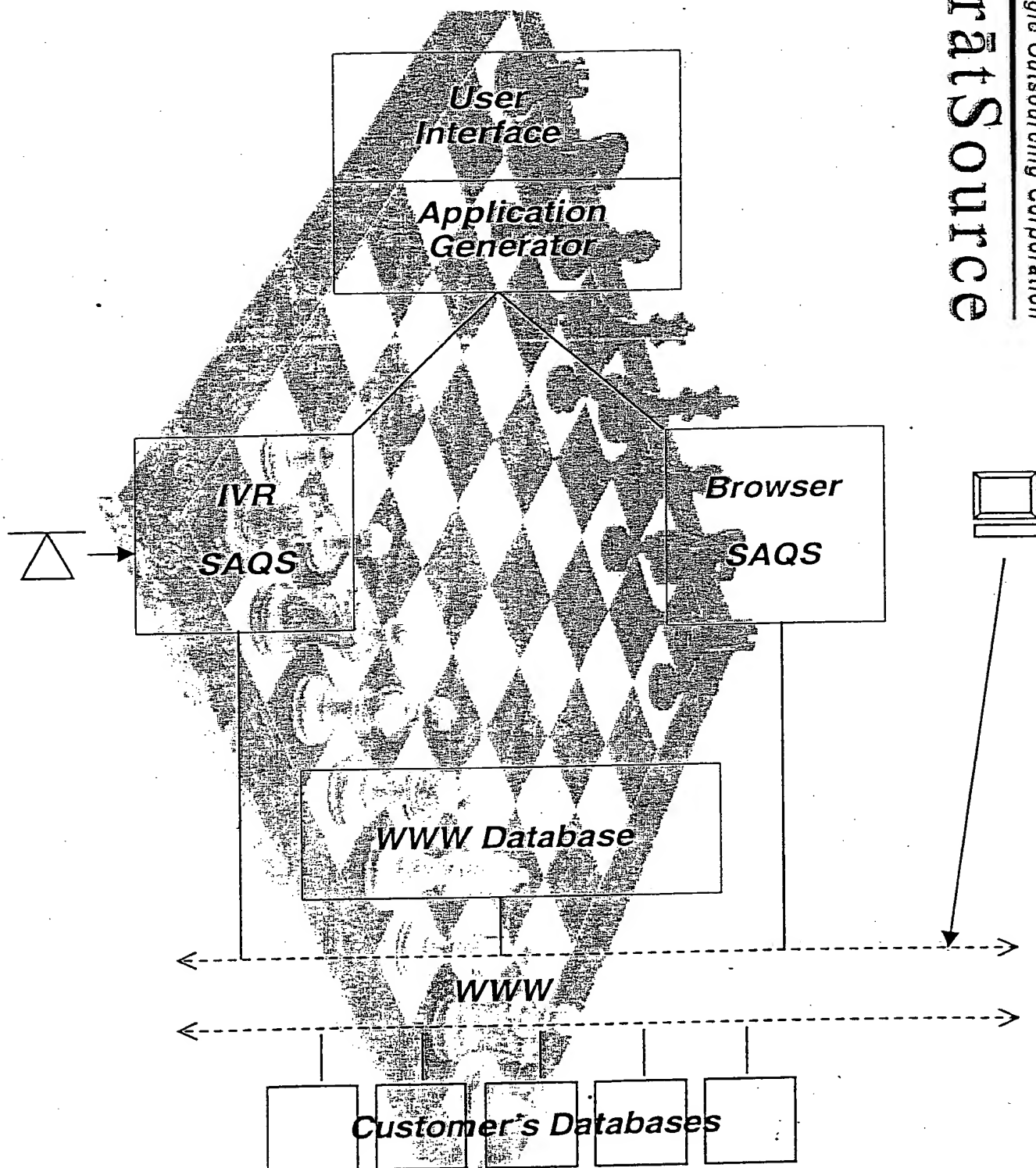
StrātSource

EXHIBIT A



Strategic Outsourcing Corporation
PROPRIETARY INFORMATION

BEST AVAILABLE COPY



StratSource

SAQTM is....



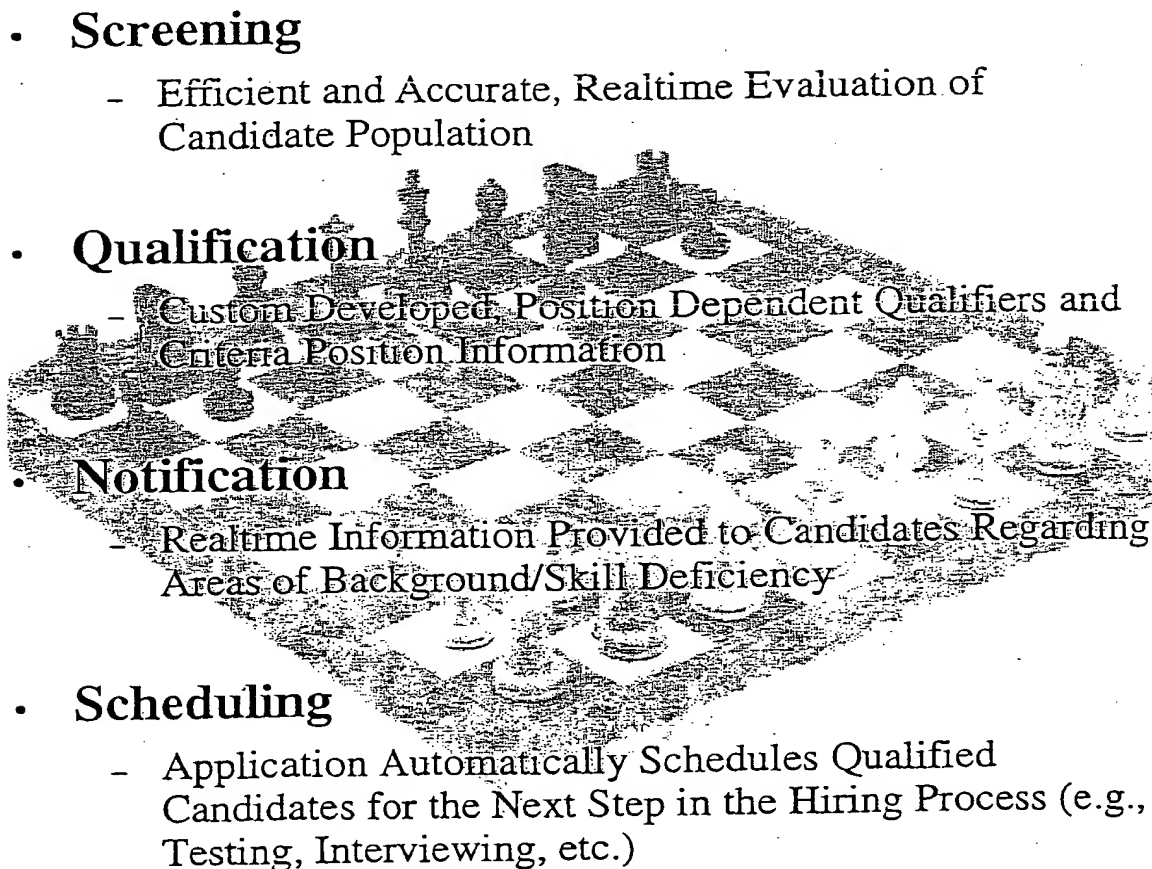
**A Software Product That Provides a
Powerful, Customized Operating
Environment for Applicant Screening,
Qualification and Scheduling**

Strategic Outsourcing Corporation
PROPRIETARY INFORMATION

BEST AVAILABLE COPY

StratSource

Components of SAQ™

- 
- **Screening**
 - Efficient and Accurate, Realtime Evaluation of Candidate Population
 - **Qualification**
 - Custom Developed, Position Dependent Qualifiers and Criteria Position Information
 - **Notification**
 - Realtime Information Provided to Candidates Regarding Areas of Background/Skill Deficiency
 - **Scheduling**
 - Application Automatically Schedules Qualified Candidates for the Next Step in the Hiring Process (e.g., Testing, Interviewing, etc.)

Strategic Outsourcing Corporation
PROPRIETARY INFORMATION

BEST AVAILABLE COPY

Leading Edge Technology

- **Web-Enabled Database Application**
 - Application Operates on Intranet or Internet
- **Database Server Independent**
- **Virtually Unlimited Capacity**
- **GUI Administrative Interface**
 - Simplifies Import/Exports, Data Backups, Statistic Evaluation, Manual Changes
- **Reporting**
 - System is Pre-Designed to Deliver Individual Candidate Data and Overall Applicant Pool Statistics
 - Self Administration and Customized Reporting is Available

Strategic Outsourcing Corporation
PROPRIETARY INFORMATION

BEST AVAILABLE COPY

StrātSource

Technology Cont'd.

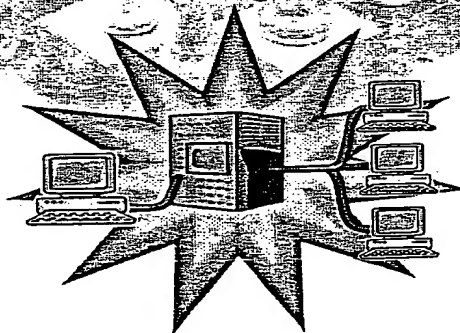
- **Mobility**

- Deployment at Remote Job Fairs or Other Public Candidate Generation Events

- **Ease-Of-Use**

- Simplistic Screen Development
- Response Validation

Self-Administered Qualification
(SAQ™)

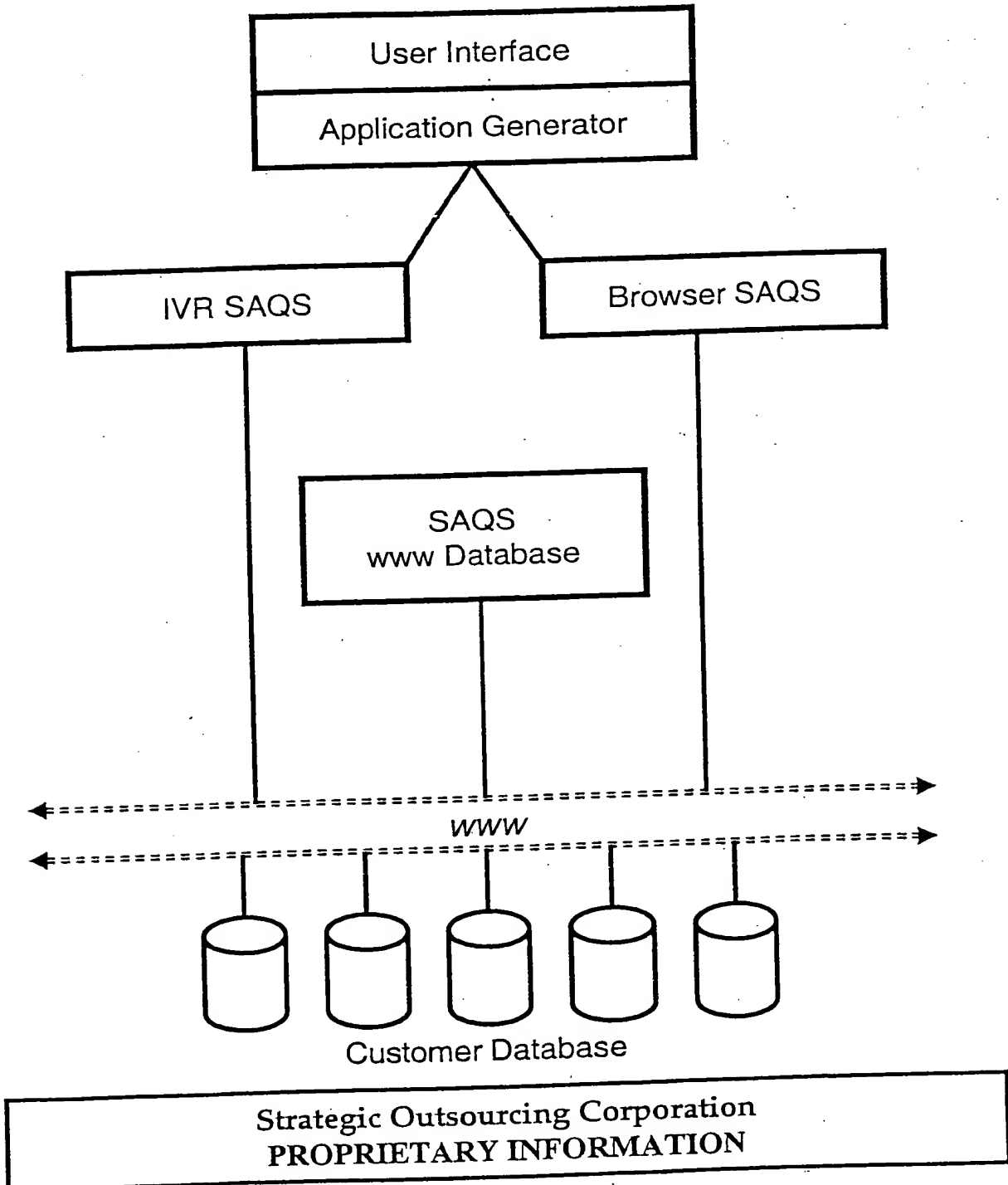


Strategic Outsourcing Corporation
PROPRIETARY INFORMATION

BEST AVAILABLE COPY

Strategic Outsourcing Corporation

StratSource



BEST AVAILABLE COPY

X. RELATED PROCEEDINGS APPENDIX

No related proceedings are referenced in II above, and thus no copies of decisions in related proceedings are provided.



Application No. (if known): 09/641,021

Attorney Docket No.: 59428/P001US/10020580

Certificate of Express Mailing Under 37 CFR 1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Airbill No. EV 568257272US in an envelope addressed to:

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on May 2, 2006
Date

Signature

Gail Miller

Typed or printed name of person signing Certificate

Registration Number, if applicable

(214) 855-8379
Telephone Number

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Return Postcard
Transmittal – 1 page
Check - \$250.00
Appeal Brief – 50 pages
Appendix IX attachment – 10 pages
Certificate of Mail – 1 page